in the course of his judgment (at p. 534) said: "It may be that the owners were not directly parties to the contract; but they took possession of the goods (as Scrutton, L.J. says) on behalf of and as agents of the charterers and so can claim the same protection as their principals. Two recent cases on the subject, the decisions in which have the weight of persuasive authority in this Court, have come before the Supreme Court of New South Wales. They are *Gilbert Stokes & Kerr Prop. Ltd. v. Dalgetty & Co. Ltd.*[6] decided in 1948 and *Waters Trading Company v. Dalgetty & Co. Ltd.*[7]. I should say at this point that I do not think there is anything in the facts of our present case which would render fallacious the application of the lines of reasoning followed in the authorities to which I have referred. In the first of the Australian cases it was held that the defendants, who were stevedores employed as independent contractors, were in possession of the plaintiff's goods as bailees on terms which included the exceptions contained in the bill of lading. In the second case, which in its facts was remarkably similar to the present case, it was held that the contract evidenced by the bill of lading remained in force until the delivery of the goods to the plaintiff consignees; that until such delivery the defendants, though independent contractors, were servants or agents of the shipowners in carrying out the contract, and that, as such, they were entitled to the same protection or immunity as was given to the shipowners or their agents by the bill of lading. So the weight of authority, whether one follows the line of agency or the line of bailment, appears to lead to the same result, that the second defendants are protected by the bill of lading.

I should, perhaps, however, commit myself to a definite opinion on this point of agency or bailment since the plaintiffs have pleaded that the second defendants as bailees for the plaintiffs have failed to deliver the 942 sacks of flour, and in his final address for the plaintiffs Mr. Lloyd strongly urged on me that the second defendants held as bailees. In my view the second defendants were clearly the agents of the first defendants. It is clear from the evidence that the second defendants throughout, both before and after the accident, were acting on the orders of the first defendants. On the other hand I do not see how the second defendants were bailees of the plaintiffs. If there was a bailment — a delivery of personal chattels in trust — then I think the second defendants were bailees of the first defendants and the extent of their bailment was to place safely the goods in the Harbour Board godowns. Teo Pong the lighterman said, "I had received instructions the flour was to be discharged into godown 10". There is no suggestion there was any duty on the second defendants at any time to see that the flour was safely delivered into the hands of the plaintiffs or any other consignee.

In conclusion I would say that I do not think the findings I have reached are affected by *Nyalchand Motichand & Co. v. A. S. Mohamed Mydin; V. Varusay Rawther*[8]. Even if the charterer of a lighter can be held to be in the same position as a lighter owner as far as liability is concerned it seems to me that there is nothing invalid in a lighter-owner limiting his liability by contract, and in this case, if the conclusions I have reached are right, the second defendants are protected as adequately as if they had personally entered into a contract with the plaintiffs under the terms of which they were excluded from liability from loss such as occurred in this case.

The claim of the plaintiffs against both the first and the second defendants is dismissed. The counter-claim of the second defendants against the first defendants, already withdrawn during the trial, is formally dismissed. As requested by counsel I reserve for argument the question of costs.

Claim dismissed.

LOW HONG alias LIEW AH HENG v. TAN HOR CHOON.

[O. C. J. (Good, J.) September 22, 1953]

[K.L. — Civil Suit No. 103 of 1940]

Bankruptcy — Annulment during occupation period — Whether annulment holds good if not substituted by an order of an appropriate Court under section 7 of the Japanese Judgments and Civil Proceedings Ordinance, 1946 — Whether annulment of an adjudication order under section 98(i) of the Bankruptcy Enactment (F.M.S. Cap. 55) disturbs the effects of a receiving order under section 9(i).

Judgment was given in favour of the plaintiff in 1941. Later in 1941, the decree not having been executed, a receiving order and adjudication order in bankruptcy were made against the defendant. The adjudication order was annulled in 1943. In 1953, upon the application of the plaintiff, notice under section 264 of the Civil Procedure Code was issued to the defendant to show cause why the decree should not be executed. In seeking to show cause, the defendant submitted, inter alia, (1) that the plaintiff could not rely upon the annulment of the adjudication order to avoid the consequences of section 9(i), because no order of an appropriate Court had been substituted for the order of annulment in accordance with the provisions of section 7 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, and (2) that an annulment under section 98(i) of the Bankruptcy Enactment is only an annulment of the adjudication order and does not disturb the effects of a receiving order under section 9(i), which would preclude the plaintiff from proceeding to execution except with the leave of the Court granted in that behalf under that sub-section.

Held: (1) following Sockalingam Chettiar v. Chan Moi[1], that the words "or otherwise" in section 7 of the Japanese Judgments and Civil Proceedings Ordinance, 1946 must be construed ejusdem generis with the words which precede them, that the section applies to matters of defence only, and that consequently the annulment of the adjudication order by the Japanese Court holds good although no order of an appropriate Court was substituted for it; (2) annulment of the adjudication order was an annulment of all the consequences of the making of a receiving order and adjudication order, which restored the defendant into his original position as if his bankruptcy had never occurred.

Cases referred to :—

(1) *Sockalingham Chettiar v. Chan Moi* (1947) M.L.J. 154.

(2) *Bailey v. Johnson* (1872), L.R. 7 Ex. 263.

CIVIL SUIT.

D. G. Rawson for the applicant.

K. Chelvanayagam for the respondent.

Cur. Adv. Vult.

Good, J. : — By a judgment of á Beckett Terrell, J., delivered on the 5th November, 1941, the plaintiff in this suit was held to be entitled to the following relief :—

(a) a declaration that all immovable property registered in the name of Tan Hock Bee at the deceased's death was the property of the deceased;

(b) a similar declaration in respect of property registered in the name of Tan Kee Boo;

(c) delivery of possession of such of the above properties as have not been sold;

(d) an enquiry whether there were at the date of the deceased's death any other properties registered in the name of Tan Hock Bee and Tan Kee Boo, and an order for the delivery of such lands;

(e) an account of the rents and profits of all such lands received since the date of the deeeased's death, the defendant to be at liberty to set off any payments made to the plaintiff;

(f) an order that the defendant pay over to the plaintiff the proceeds of sale of Rawang E.M.R. 3786 and Grant 2191; and

(g) costs.

Before the end of 1941 the defendant lodged an appeal against the decision, and subsequently filed his petition in bankruptcy. The appeal was not proceeded with, but a receiving order and adjudication order were made in the bankruptcy proceedings on the 5th December, 1941. On the 10th April, 1943 the defendant applied for the annulment of the bankruptcy proceedings, and on the 17th September, 1943 the adjudication order was annulled by the Court.

Upon the application of the plaintiff, and in accordance with the provisions of section 264 of the Civil Procedure Code, notice has been issued to the defendant to show cause why the decree should not be executed against him.

In seeking to show cause why execution should not issue, the defendant relies on section 9(i) of the Bankruptcy Enactment, which provides :—

"9. (i) On the making of a receiving order the Official Assignee shall be thereby constituted receiver of the property of the debtor and thereafter, except as directed by this Enactment, no creditor to whom the debtor is indebted, in respect of any debt provable in bankruptcy, shall have any remedy against the property or person of the debtor in respect of the debt or shall commence any action or other legal proceeding in respect of such debt unless with the leave of the Court and on such terms as the Court may impose."

In support of his submission that execution cannot now issue without the leave of the Court duly obtained under section 9(i), counsel for the defendant puts forward two arguments :—

(a) that the plaintiff cannot rely upon the annulment of the adjudication order in order to avoid the consequences of section 9(i), because no order of an appropriate Court has been substituted for the order of annulment in accordance with the provisions of section 7 of the Japanese Judgments and Civil Proceedings Ordinance, 1946; and

(b) that an annulment under section 98(i) of the Bankruptcy Enactment is only an annulment of the adjudication order, and does not disturb the effects of a receiving order under section 9(i).

These are the defendant's main arguments, but he also puts forward the following additional arguments :—

(c) that all his liabilities were notionally discharged on the vesting of his property in the Official Assignee at the date of the making of the adjudication order;

(d) that his liability in respect of the sum of $10,259.22, being the taxed costs of the Plaintiff in the suit, was discharged in favour of the Japanese-appointed Custodian of Enemy Property;

(e) that the plaintiff cannot recover the sum of $11,800, being the proceeds of sale of Rawang E.M.R. 3786 and Grant 2191, because she did not register her claim in the Bankruptcy Office; and

(f) that the defendant cannot comply with the order for delivery of possession of the immovable property registered in the names of Tan Hock Bee and Tan Kee Boo because the documents of title were lost or destroyed during the occupation.

With regard to argument (a), the defendant's case may be put shortly as follows : The effect of section 9(i) of the Bankruptcy Enactment is to prevent execution from issuing against the goods of a bankrupt except with the leave of the Court. The defendant was adjudicated a bankrupt in 1941. He is still a bankrupt because the annulment was a Japanese decree for which no order of an appropriate Court has been substituted under section 5 of the Japanese Judgments and Civil Proceedings Ordinance, 1946. Section 7 of the Ordinance which provides :—

"7. No Japanese decree shall be pleaded by way of set-off or counterclaim or otherwise in any proceedings unless the judgment, order, decree or grant of an appropriate Court has been substituted for such Japanese decree under the provisions of section 5 of this Ordinance"

precludes the plaintiff from relying on the annulment. Therefore execution cannot issue against the defendant except with the leave of the Court obtained under section 9(i) of the Bankruptcy Enactment.

In replying to this argument, counsel for the plaintiff referred me to the case of *Sockalingham Chettiar v. Chan Moi*[1] . In that case Evans, J., in considering the effect of the words "or otherwise" in section 7 of the Ordinance, held that they did not preclude a landlord from suing for the ejectment of a tenant by virtue of Letters of Administration *cum testamento annexo* granted to him by a Japanese Court. Evans, J., held that the words "or otherwise" must be construed *ejusdem generis* with the preceding words, and that the section therefore applies only to matters of defence. Counsel for the defendant referred me to section 45 of the Interpretation and General Clauses Ordinance, 1948, but this section was repealed by section 12 of Ordinance No. 41 of 1953, and as the question is the principle of construction to be applied now and not the principle which was applicable from 1948 to 1953, section 45 is irrelevant. Following the decision of Evans, J., I have come to the conclusion that the annulment of the adjudication order by the Japanese Court holds good and that from the 17th September, 1943 the defendant was no longer a bankrupt.

I come now to argument (b), in which counsel for the defendant again relies on section 9(i) of the Bankruptcy Enactment. He argues that the issue of notice to show cause under section 264 of the Civil Procedure Code cannot be treated as leave obtained under section 9(i) of the Bankruptcy Enactment. In my view, this part of his argument is sound, but the question of leave does not arise if the effect of annulment is that the provisions of section 9(i) cease to apply.

The annulment was granted under section 98(i) of the Enactment on the ground that the debts of the bankrupt had been paid in full. So far as the decree in this suit is concerned, the grounds of annulment related only to the sum of $10,259.22 for costs, to which I shall refer later.

Section 98(i) provides, *inter alia* :—

".....where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full.....the Court may annul the adjudication."

It is unnecessary to quote the other provisions of the section, as they do not apply to this case.

Section 98(ii) provides :—

"Where an adjudication is annulled under this section all sales and dispositions of property and payments duly made and all acts theretofore done by an Official Assignee or other person acting under his authority or by the Court shall be valid but the property of the debtor who was adjudged bankrupt shall vest in such person as the Court appoints or in default of any such appointment revert to the debtor for all his estate or interest therein on such terms and subject to such conditions (if any) as the Court may declare by order."

Section 81 of the Bankruptcy Act, 1869, contained provisions to all intents and purposes identical with those of section 98(i) of the Enactment. In considering the effect of that section in *Bailey v. Johnson*[2], Cockburn, C.J., said :—

"The effect of section 81 is, subject to any bona fide disposition lawfully made by the trustee prior to the annulling of the bankruptcy, and subject to any condition which the Court annulling the bankruptcy may by its order impose, to remit the party whose bankruptcy is set aside to his original situation. Here the Court of Bankruptcy has imposed no conditions; the general provision has therefore its full effect, and that effect is to remit the bankrupt, at the moment the decree annulling his bankruptcy is pronounced, to his original powers and rights in respect of his property."

And Brett, J., in the same case, said :—

"I am of the same opinion, and I agree with the Lord Chief Justice that it is impossible logically to stop short of giving to the word revert in section 81 the full interpretation which he has placed upon it."

It is of particular interest to note the use by Lord Cockburn of the expressions "annulling the bankruptcy" and "the party whose bankruptcy is set aside", for the only sections in the 1869 Act in which the word "annul" is used, sections 28 and 84, speak of annulling the order of adjudication, or annulling the adjudication, never of annulling the bankruptcy. The learned Lord Chief Justice, therefore, manifestly regarded the expressions "annul the order of adjudication" and "annul the adjudication" as being synonymous with "annul the bankruptcy" or "set aside the bankruptcy".

In the present case the Court, in annulling the adjudication, appointed no person in whom the property should vest and declared no terms or conditions upon which it should revert to the debtor. It is clear that the effect of the order of annulment made on the 17th September, 1943 was to restore the defendant to his original position as if he had never been made a bankrupt. Section 9(i) therefore does not apply, and the defendant's submission on this ground consequently fails.

Having thus disposed of the defendant's two main lines of argument, I come now to the additional arguments put forward on his behalf.

If the defendant's bankruptcy had not been annulled, argument (c) might be valid in the sense, not that his adjudication relieved him of the liability for the payment of his debts, but that it took the discharging of that liability out of his hands by transferring the conduct of his financial affairs to the Official Assignee. This is the reason for the protection given of the assets afforded by section 9(i). But as I have held that section 9(i) does not apply where the adjudication has been annulled, it cannot be said that the defendant has discharged the liabilities imposed upon him by the judgment. As an ancillary submission to argument (c) the defendant put forward the further argument that since the annulment was

ordered on the ground that his debts had been paid in full he could be under no liability to the plaintiff in respect of a debt which existed prior to the adjudication. This argument could only apply to the sum of $10,259.22 mentioned above, and for the reasons given in the next paragraph I am unable to hold that this liability has in fact been discharged, even though the purported discharge was one of the grounds of annulment. Argument (c) therefore fails.

Argument (d) appears to be based on the fact that in the statement attached to the Official Assignee's report to the Court in the proceedings for annulment a sum of $10,259.22 is shown as a "deposit to meet Messrs. Shearn Delamore & Co.'s bill of costs proved by Custodian of Enemy Property, Selangor". The report states that this sum is shown as a deposit because the defendant had expressed his intention of appealing against the claim for costs. The amount seems to have been earmarked as a potential payment to a creditor in the bankruptcy, subject to the decision of the Court as to whether it was payable or not. The matter never came before the Court, and the deposit must have been released by the Official Assignee in pursuance of the annulment. At all events the bill has not been paid, and it remains a liability of the defendant. By reason of the annulment it is unnecessary now to consider the position of the Custodian in the matter.

Argument (e) fails because the plaintiff is not claiming in bankruptcy. As I have already held above, annulment brought an end to the bankruptcy proceedings and put the defendant back in the position he was in before they were commenced. Moreover the plaintiff, strictly speaking, is making no claim; her right to payment subsists by virtue of the judgment given in her favour, and the defendant is called upon to show cause why that right should not be enforced by execution.

Argument (f) which is directed to the order of á Beckett Terrell, J., for the delivery of possession of such of the properties registered in the name of Tan Hock Bee or Tan Kee Boo as had not been sold at the date of the judgment, overlooks the effect of the declarations which precede the order for delivery of possession, namely, that all the immovable property registered in those two names was the property of the defendant's eldest brother, deceased. The obligation cast upon the defendant is not, therefore, to transfer to the plaintiff the titles to such lands as remain unsold, but to deliver to the plaintiff possession of the lands. If he is in possession of any lands which at the date of the judgment were registered in either of the above names, he is under a legal duty to hand them over to the plaintiff whether the documents of title are in existence or not. If they have been lost or destroyed, the plaintiff can always have recourse, if so advised, to the procedure in section 100 of the Land Code.

I hold that the defendant has failed to show cause, on any of the above grounds put forward on his behalf, why execution should not issue. I accordingly order the decree to be executed, and I further order that the defendant pay the plaintiff's costs of the proceedings on the notice to show cause.

Order accordingly.

Re G. B. TIRU-CHELVAM.

[O. C. J. (Mathew, C.J.) October 8, 1953]

[K.L. — Petition for Admission No. 21 of 1953]

Advocates and Solicitors Ordinance, 1947, s. 5(2) and (5) — Shortening of period to attend and receive instruction in law.

The applicant, a Barrister-at-Law, applied to the Court that the notice referred to under section 5(2) of the Advocates and Solicitors Ordinance as required to be posted be shortened, and that the period during which the applicant is required to attend and receive instruction in law be shortened.

His special grounds for shortening the period during which notices are required to be posted were: (i) that he had read in Chambers of a practising barrister of 7 years standing from 19th May 1952 to 28th February 1953 and further served as Circuit Magistrate, Province Wellesley from 10th March to 10th May 1953 and subsequently as Acting Senior Registrar, Supreme Court, Kuala Lumpur; (ii) that he was 53 years old and about to retire from Government service and in poor health.

Held: (1) there must be more than one ground for exercising discretion under section 5(5) of the Advocates and Solicitors Ordinance and such grounds must be substantial; (2) in the circumstances of this case there were insufficient grounds for the exercise of the Court's discretion.

Cases referred to:—

(1) *Re Ramaswami* (Petition for Admission No. 10 of 1950 — unreported).

(2) *Re Ahmad bin Mohamed Ibrahim* reviewed in (1946) M.L.J. lxi.

PETITION FOR ADMISSION.

C. Mills for the applicant.

K. K. Benjamin for the Bar Committee: Selangor, Negri Sembilan and Kelantan.

Peter Hall for the Bar Council, F.M.

Cur. Adv. Vult.

Mathew, C.J.: — The applicant has moved the Court to exercise its discretionary powers under section 5(5) of the Advocates and Solicitors Ordinance, 1947, and has asked that an order be made:—